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12 **UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF NEVADA**

14 **In re:**

15 **USA Commercial Mortgage Company**  
16 **06-10725 – Lead Case**

17 **USA Capital Realty Advisors, LLC**  
18 **06-10726**

19 **USA Capital Diversified Trust Deed Fund,**  
20 **LLC**  
21 **06-10727**

22 **USA Capital First Trust Deed Fund, LLC**  
23 **06-10728**

24 **USA Securities, LLC**  
25 **06-10729**

26 **Debtors.**

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegle Presiding

**Affecting:**

.. All Cases

**or Only:**

× USA Commercial Mortgage Company  
.. USA Capital Realty Advisors, LLC  
.. USA Capital Diversified Trust Deed Fund,  
LLC  
× USA Capital First Trust Deed Fund, LLC  
.. USA Securities, LLC

18 **Declaration of Edward M. Burr in Support of USACM Liquidating Trust Objections**  
19 **to Proofs of Claim and Motions to Classify Claims**

20 I, Edward M. Burr, hereby declare under penalty of perjury that:

21 1. I am a principal with Sierra Consulting Group, LLC (“Sierra”). Sierra is one  
22 of the leading providers of restructuring advisory and litigation support services in the  
23 Southwest. Sierra is a leading national consulting firm comprised of experienced CPAs  
24 and other financial professionals.

25 2. I submit this declaration on behalf of the USACM Liquidating Trust’s  
26 Objections to Proofs of Claim and Motions to Classify Claims filed this date.

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1       3.     This Court approved the Official Committee of Unsecured Creditors of USA  
2     Commercial Mortgage Company's ("Committee") appointment of Sierra as financial  
3     advisers on August 11, 2006. Since that date, I have assisted the Committee in analyzing  
4     facts concerning these jointly administered bankruptcy cases. As of the Effective Date of  
5     the confirmed Plan of Reorganization, Sierra is retained by the USACM Liquidating Trust  
6     to investigate certain claims.

7       4.     I make the following declaration based upon my personal knowledge, and  
8     upon the records of the Debtors described in this declaration, including Debtors' original  
9     and amended schedules of liabilities and the proofs of claim described herein.

10      5.     On April 13, 2006 (the "Petition Date"), USACM and other debtors filed  
11     voluntary petitions for relief under chapter 11 of the Bankruptcy Code. USACM  
12     continued to operate its business as a debtor-in-possession pursuant to sections 1107(a)  
13     and 1108 of the Bankruptcy Code, under new management by Thomas J. Allison of  
14     Mesirow Financial Interim Management, LLC ("Mesirow"), who served as the Chief  
15     Restructuring Officer.

16      6.     On January 8, 2007, the Court entered an order confirming the Plan [Docket  
17     No. 2376].

18      7.     Under section I.A. of the Plan, any and all Claims of Non-Debtor Insiders  
19     against USACM are "Subordinated Claims." "Non-Debtor Insiders" is defined to mean  
20     any Insider that is not a Debtor, and expressly includes, without limitation, the IP Parties,  
21     any Affiliate of the Debtors and the IP Parties, and Insiders of the IP Parties. The "IP  
22     Parties" are defined to mean Joseph Milanowski, Thomas Hantges, Paul Hamilton, and  
23     USA Investment Partners, LLC ("USAIP"). "Affiliates" include any corporation 20% or  
24     more of whose outstanding voting securities are directly or indirectly owned or controlled  
25     by a person that directly or indirectly owns or controls 20% or more of the outstanding  
26     voting securities of the debtor. Plan § I.A.; 11 U.S.C. §§ 101(2)(B), (15).

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1       8. Pursuant to section II.C.1. of the Plan, all payment to holders of Allowed  
2 Subordinated Claims is subordinated to the payment in full, plus interest, of all Allowed  
3 Penalty Claims, which in turn are subordinated to the payment in full, plus interest, of all  
4 Allowed General Unsecured Claims. The Plan explains that no distribution to holders of  
5 Allowed Subordinated Claims is anticipated.

6       9. The Plan also provided for rejection of most executory contracts, including  
7 the Leases described in this declaration, through not including such leases in the Schedule  
8 of assumed contracts and leases. Plan V.B.

9       10. **Haspinov, LLC** (“Haspinov”). Haspinov leased office space to USACM  
10 pursuant to a lease dated April 1, 2002 (the “Lease”). USACM continued to occupy space  
11 pursuant to the Lease postpetition.

12       11. According to public records available to the USACM Liquidating Trust,  
13 Haspinov is a limited liability company, the sole member and manager of which is USAIP.

14       12. I am informed by communications with Mesirow and my observations of the  
15 leased premises that prior to the Petition Date, Haspinov and USACM allowed and  
16 arranged for a portion of the office space leased to USACM under the Lease to be used by  
17 Vegas Hot Spots, LLC, the sole member and manager of which is also USAIP. Debtor  
18 USACM under Mesirow’s management allowed the arrangement to continue, while  
19 segregating access to the USACM portion of the premises. On information and belief,  
20 Vegas Hot Spots has not paid any portion of the rent or other charges due under the Lease  
21 to Haspinov, or reimbursed USACM for its share of such rent and charges.

22       13. Haspinov was listed in the USACM Schedules as a party to an executory  
23 contract with USACM in the form of a real property lease of office space [Docket 784,  
24 Schedule G] Haspinov was also listed as holder of an unsecured claim in the amount of  
25 \$92,231.08 [Docket 682, Schedule F]. On March 7, 2007, USACM filed amended  
26

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1 Schedules that list Haspinov as an unsecured creditor holding a claim in the same amount,  
2 but showing its claim as disputed. [Docket 3002]

3 14. On November 8, 2006, Haspinov filed a proof of claim, which it amended on  
4 February 9, 2007, with an amended proof of claim in the amount of \$404,261.60 [Claim  
5 Number 736-2]. That amount apparently reflects one year of rental and other payments  
6 due under the Haspinov Lease, pursuant to 11 U.S.C. § 502(b)(6).

7 15. **Pecos Professional Park Limited Partnership** (“Pecos”). Pecos leased  
8 office space to USACM pursuant to a lease dated July 21, 1999 (the “Lease”). USACM  
9 continued to occupy space pursuant to the Lease postpetition.

10 16. Pecos is a limited partnership. According to public records, one of its  
11 general partners is USA Development, Inc. and one of its limited partners is Institutional  
12 Equity Partners, LLC. Public records show that USA Development, Inc. in turn is  
13 controlled by Hantges, as president and secretary, and that Institutional Equity Partners,  
14 LLC is managed by USAIP.<sup>1</sup>

15 17. Pecos was listed in the USACM Schedules as a party to an executory  
16 contract with USACM in the form of a real property lease of office space [Docket 784,  
17 Schedule G]. Pecos was also listed as holder of an unsecured claim in the amount of  
18 \$166,788.42. [Docket 682, Schedule F]. On March 7, 2007, USACM filed amended  
19 Schedules that list Pecos as an unsecured creditor holding a claim in the same amount, but  
20 showing its claim as disputed. [Docket 3002]

21 18. On November 9, 2006, Pecos filed a proof of claim, which it amended on  
22 February 9, 2007, with an amended proof of claim in the amount of \$470,080.98 [Claim  
23 Number 752-2]. That amount apparently reflects one year of rental and other payments  
24 due under the Pecos Lease, pursuant to 11 U.S.C. § 502(b)(6).

25  
26 <sup>1</sup> The USACM Liquidating Trust reserves the right to amend and expand this objection  
after discovery to elicit additional facts.

1           19.   **Tanamera Corporate Center, LLC** (“Tanamera”). Tanamera leased office  
2 space to USACM pursuant to a lease dated March 16, 2005 (the “Lease”).

3           20.   According to public records available to the USACM Liquidating Trust,  
4 Tanamera is a Nevada limited liability company. According to its 2004 Articles of  
5 Incorporation (attached as Ex. 1 to USACM Liquidating Trust’s Motion to Classify  
6 Claims Filed by Tanamera Corporate Center LLC in Plan Class A-7, and Reservation of  
7 Counterclaims and Objections filed simultaneously herewith (“Motion to Classify  
8 Tanamera Claims”)), Messrs. Hantges and Milanowski were two of its three managers.  
9 The records thereafter are inconsistent. A January 26, 2005 filing listed DDH Financial  
10 Corp. and B&L Investments, Inc. as its managers; a February 24, 2005 filing listed DDH  
11 Financial Corp. and USAIP as the managers; and an October 27, 2005 filing likewise  
12 listed DDH and USAIP as the mangers, showing this arrangement as continuing through  
13 December 2006 (copies of referenced filings attached as Ex. 2 to Motion to Classify  
14 Tanamera Claims). The most recent filing (attached as Ex. 3 to Motion to Classify  
15 Tanamera Claims) shows B&L Investments along with DDH Financial as the managers.  
16 The members are not listed in any of the public filings. This information is sufficient to  
17 show an Insider relationship during at least most of the USACM bankruptcy case, and also  
18 show USAIP as one of the managers when the lease was signed.

19           21.   Tanamera was listed in the USACM Schedules as a party to an executory  
20 contract with USACM in the form of a real property lease of office space [Docket 784,  
21 Schedule G].

22           22.   On July 14, 2006, Tanamera filed a proof of claim, which it amended on  
23 November 2, 2006, with an amended proof of claim in the amount of \$66,668.00 [Claim  
24 Number 61-2].

25           23.   **Lerin Hills Ltd.** (“Lerin Hills”). Lerin Hills filed Claim No. 1279 on  
26 November 10, 2006, claiming an unsecured non-priority claim of \$1,257,233.40 and a

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1 priority claim of \$797,175.62, for a total of \$2,054,409.07 [sic]. The Lerin Hills Claim  
2 alleges breach of contract, among other theories. Attached to the Lerin Hills Claim is a  
3 summary of alleged damages, but a copy of the contract allegedly breached is not attached,  
4 nor is any other supporting documentation provided.

5 24. Lerin Hills asserts that the amount of \$797,175.62 is believed to have been  
6 paid to private lenders since the bankruptcy petition was filed in the form of interest, and  
7 arguably constitutes an administrative expense under 11 U.S.C. §503(b)(1).

8 25. Lerin Hills is not a party to any post-petition agreement with any of the  
9 jointly administered Debtors. No executory contract or other agreement with Lerin Hills  
10 was assumed by any of the Debtors under 11 U.S.C. § 365.

11 26. **Mountain West Mortgage Co.** (“MWM”). I have determined in my  
12 investigation of the historic activities of USACM that USACM originated loans for  
13 borrowers and solicited the funding of such loans from numerous individuals and entities  
14 (collectively, the “Direct Lenders”). Upon information and belief, with few exceptions,  
15 USACM originated loans that provided for a mandatory initial funding amount with any  
16 additional funding to be made solely at the discretion of the Direct Lenders. Upon further  
17 information and belief, when USACM arranged an increase in the original loan amount,  
18 USACM solicited the existing Direct Lenders in the original loan for the additional funds.  
19 Absent the affirmative decision by the Direct Lenders to invest additional funds, the  
20 original loan would not be increased.

21 27. MWM filed Claim No. 203 on September 20, 2006, claiming an unsecured  
22 non-priority claim of \$2,048,000.00 for “Services performed.” Attached to the MWM  
23 Claim is a Declaration of Joe Milanowski (“Milanowski Declaration”) and correspondence  
24 referenced in the Declaration. No loan transaction documents are attached to the MWM  
25 Claim.

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1       28. The Milanowski Declaration asserts that MWM is a mortgage company  
2 through which several entities and individuals lent monies as direct lenders (“MWM  
3 Direct Lenders”), along with USACM investors through USACM as the loan service  
4 provider. In that regard, the Milanowski Declaration alleges that the Lerin Hills project  
5 was funded with a second deed of trust through funds generated by MWM and USACM,  
6 and serviced by USACM.

7       29. The Milanowski Declaration alleges that the Lerin Hills project called for  
8 \$12,900,000 in funding.

9       30. The Milanowski Declaration further asserts that when USACM and MWM  
10 entered into the Lerin Hills loan transaction, it was agreed that Lerin Hills would pay an  
11 exit fee of \$5,120,000, \$3,072,000 of which was to be paid to USACM, and \$2,048,000 of  
12 which was to be paid to MWM, as evidenced by the loan documents.

13       31. The Milanowski Declaration further asserts that MWM relied on this  
14 representation and promised third parties a share of the exit fee funds upon payment to  
15 MWM.

16       32. I have reviewed the status of loan collections during the administration of  
17 these cases. According to Mesriow’s records, no exit fee was or will be paid on the Lerin  
18 Hills loan transaction.

19       33. I am aware that the record in the administrative file of this Court  
20 demonstrates: (i) Joseph Milanowski was a principal controlling the affairs of USACM  
21 before the bankruptcy filing; (ii) Milanowski directed the theft of tens of millions of  
22 dollars of principal from direct lenders; (iii) Milanowski has consistently misrepresented  
23 the assets, liabilities and intentions of USA Investment Partners, LLC to Thomas Allison  
24 on Debtors’ behalf; and (iv) Milanowski can not testify as set forth in the Milanowski  
25 Declaration at a trial of this matter without waiving his Fifth Amendment privilege against  
26 self-incrimination, an unlikely event at best.

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1       34. I am aware from the Court's claims docket that numerous Direct Lenders  
2 have filed proofs of claim asserting damages against USACM arising out of the  
3 origination of the Lerin Hills loan.

4       35. I believe that MWM is responsible for any misrepresentations made or  
5 omissions of material fact in connection with the Lerin Hills loan.

6       36. **Copper Sage Commercial Center LLC** ("Copper Sage"). Copper Sage  
7 filed its claim on November 9, 2006, claiming an unsecured debt of \$3,500,000 for  
8 "breach of contract." Copper Sage filed an amended proof of claim on November 13,  
9 2006, claiming an unsecured debt of \$3,500,000 for "Breach of Contract, Intentional  
10 Misrepresentation and other theories."

11      37. Copper Sage appended to its claim an incomplete copy of a Construction  
12 Loan Agreement between Copper Sage as borrower and a group of direct lenders ("Copper  
13 Sage Direct Lenders") as lender, dated March 1, 2006 ("Loan Agreement").

14      38. The Copper Sage Direct Lenders funded the initial loan in the amount of  
15 \$3,550,000. The Loan Agreement provides that the principal advanced under the  
16 promissory note may be increased to \$11,300,000, but does not oblige USACM or the  
17 Copper Sage Direct Lenders to advance loan funds to Copper Sage beyond the initial  
18 principal amount of \$3,550,000.

19      39. Also attached to the Copper Sage Claim is a copy of a Deed of Trust,  
20 Assignments of Rents, Security Agreement and Fixture Filing dated March 1, 2006 by and  
21 between Copper Sage as Trustor, First American Title Insurance Company as Trustee, and  
22 the Copper Sage Direct Lenders as Beneficiary ("Deed of Trust"). The Deed of Trust  
23 states that it for the purpose of securing payment of Trustor's Promissory Note in the  
24 initial principal amount of \$3,550,000, and provides that the principal amount of the  
25 Promissory Note may be increased to \$11,300,000.

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1           40.   **Los Valles Land & Golf LLC** (“Los Valles”). Los Valles filed Claim No.  
2 1366 on November 13, 2006. The Los Valles Claim alleges:

3           40.1. Unlawful collection and/or charging of loan fees, extension fees, and  
4 exit fees pursuant to California Business and Professional Code §10130 and/or 10131;

5           40.2. Willful failure to timely deliver payoff statement demanded under  
6 California Civil Code § 2943 and Nevada Revised Statutes §107 210;

7           40.3. Intentional misrepresentation;

8           40.4. Violation of consumer protection statutes and/or unfair competition;

9 and

10           40.5. A claim for attorneys fees in an amount to be determined.

11           41.   Attached to the Los Valles Claim is an Attachment to Proof of Claim of Los  
12 Valles Land & Golf, LLC (“Attachment”), as well as copies of several documents  
13 referenced in the Attachment. Those documents include a copies of a Fee Agreement  
14 dated March 3, 2004 by and between Los Valles as Borrower, and USACM (“Fee  
15 Agreement”); a Buyer’s Settlement Statement dated March 17, 2004, prepared by First  
16 American Title Company (“Settlement Statement”); an incomplete copy of a Loan  
17 Agreement dated March 3, 2004 between Los Valles as Borrower and the Los Valles  
18 Direct Lenders as Lender (“Loan Agreement”); a Loan Extension Agreement dated  
19 October 3, 2005 by and between Los Valles as Borrower, and the Los Valles Direct  
20 Lenders as Lender (“First Loan Extension Agreement”); an Assumption Agreement dated  
21 January 3, 2006, between Los Valles as Borrower, the Los Valles Direct Lenders as  
22 Lender, and Transferee, Los Valles Company, Inc. (“Assumption Agreement”); a Loan  
23 Extension Agreement dated March 17, 2006, by and between Los Valles Company, Inc. as  
24 Borrower, and the Los Valles Direct Lenders as Lender (“Second Loan Extension  
25 Agreement”); a Promissory Note Secured by Deed of Trust dated March 3, 2004, in the  
26 principal amount of \$11,700,000 (“Note”); a Deed of Trust, Assignment of Rents, Security

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1 Agreement and Fixture Filing (Second Position) dated March 3, 2004 ("Deed of Trust");  
2 three letters to USACM concerning Los Valles' request for a payoff demand and per diem  
3 amount through December 31, 2004 ("Los Valles correspondence"); and a Demand for  
4 Payment from USACM dated February 23, 2005 ("Demand for Payment").

5 42. Los Valles alleges that it paid \$500,000 in loan fees at closing, as required  
6 by the Loan Agreement. Los Valles contends that the Loan Agreement further obliges Los  
7 Valles to pay USACM an exit fee, as a deferred loan fee, of 1.5% of the gross sales price  
8 of each lot at the time sale of each lot closes.

9 43. Los Valles also contends that under the First Loan Extension Agreement and  
10 Second Loan Extension Agreement Los Valles is obliged to pay extension fees of  
11 \$234,000 for each extension.

12 44. Los Valles asserts that the Fee Agreement was entered into in California and  
13 that USACM is not a licensed real estate broker in California. Los Valles contends that,  
14 therefore, USACM was not authorized to collect or charge loan fees, extension fees,  
15 and/or exit fees from Los Valles.

16 45. The Fee Agreement, however, provides that Los Valles is a Delaware  
17 limited liability company and that USACM is a Nevada corporation. It further provides  
18 that the Fee Agreement "shall be governed by the laws of the State of Nevada."

19 46. Los Valles contends notwithstanding the Assumption Agreement and that  
20 the Second Loan Extension Agreement was issued to Los Valles Company, Inc. as  
21 Borrower, Los Valles remains liable for the extension fees and exit fee and any interest  
22 thereon to USACM.

23 47. Los Valles seeks restitution from USACM for any amounts it paid or may be  
24 required to pay in the future. Los Valles asserts that its unsecured, nonpriority claim is for  
25 no less than \$2,000,000 in loan fees, extension fees, and exit fees collected or charged by  
26 USACM, but does not provide a calculation of how it arrived at that figure.

1       48. Los Valles contends that notwithstanding the Assumption Agreement and  
2 that the Second Loan Extension Agreement was issued to Los Valles Company, Inc. as  
3 Borrower, Los Valles remains liable for the extension fees and exit fee and any interest  
4 thereon to USACM.

5       49. Los Valles additionally alleges that USACM willfully refused to deliver a  
6 payoff demand statement under California Civil Code § 2943 and Nevada Revised Statutes  
7 § 107.210, and that when USACM provided the payoff demand statement, it intentionally  
8 misrepresented therein that Los Valles owed an exit fee of \$1,664,403.94, knowing that  
9 the sale of lots was a condition precedent to Los Valles' liability for an exit fee and that no  
10 lot sales had yet occurred. Los Valles claims that it relied on USACM's statement, and  
11 was thereby prevented from obtaining new financing, which allegedly triggered the need  
12 for loan extensions and obtaining for USACM the extension fees and the exit fee. Los  
13 Valles asserts that USACM is therefore liable to Los Valles for no less than \$2,000,000,  
14 and that Los Valles is entitled to punitive or exemplary damages for USACM's alleged  
15 willful and intentional conduct in making alleged false statements.

16       50. Finally, Los Valles alleges that USACM violated unspecified consumer  
17 protection statutes by engaging in unfair competition through each of the above alleged  
18 acts, including charging fees for arranging a loan without having a California real estate  
19 license, willfully failing to issue a timely payoff demand statement, and repeatedly and  
20 intentionally misrepresenting the amount required to pay off the loan. Los Valles seeks  
21 restitution of no less than \$2,000,000 on this claim.

22       51. Los Valles asserts that USACM is liable for its attorneys' fees in connection  
23 with each of Los Valles' claims.

24       52. Los Valles further asserts a right to setoff and/or recoup any payments that  
25 Los Valles has made or may make on account of the loan fee, extension fees, or the exit  
26 fee, as well as any of its other claims against USACM, against amounts that Los Valles

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1 may owe to USACM and the Direct Lenders under the Note, Deed of Trust, Fee  
2 Agreement, Loan Agreement, and related documents.

3 53. Interestingly, the Los Valles proof of claim makes no mention of an October  
4 6, 2006 letter agreement between Los Valles and USACM as part of a satisfaction of the  
5 USACM direct loan known as Halsey Canyon wherein USACM compromised its rights  
6 and claims with Los Valles. The agreement reflects compromises by USACM to its  
7 detriment in consideration of the promises and commitments by Los Valles therein,  
8 including acknowledgment of the sums due and acknowledgment that Nevada law  
9 governs.

10 54. Based upon our investigation to date, each of the Claims described should  
11 not be allowed in the amount claimed. We are continuing to investigate the nature of the  
12 Claims, defenses and the amounts owed.

13 I make this declaration under penalty of perjury under the laws of the United States  
14 on Tuesday, March 13, 2007.

15 By /s/ Edward M. Burr  
16 Edward M. Burr

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